Supreme Court, U. S.
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80-372

NO. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FREDDIE FRANK MITCHELL,
Petitioner,

V.

STATE OF GEORGIA,
Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE
STATE OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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August 27, 1980

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FREDDIE FRANK MITCHELL,
Petitioner,

V.

STATE OF GEORGIA,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Freddie Frank Mitchell, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of the State of Georgia in this case.

QUESTIONS PRESENTED

Whether Georgia Code Section 26-2910 (1968), a criminal statute defining reckless conduct, is so vague and indefinite that any penalty prescribed for its violation constitutes a denial of due process as required by the due process clause of the Fourteenth Amendment.

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OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported as *Mitchell v. State*, 154 Ga.App. 399, ___ S.E.2d _____ (1980) and appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on April 9, 1980, affirming Petitioner's conviction dated July 25, 1979. A motion for rehearing was denied on April 24, 1980. Petitioner then applied for a writ of certiorari to the Supreme Court of Georgia. The writ was denied on June 11, 1980. A motion for reconsideration was filed and denied on June 24, 1980. This petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional and statutory provisions are as follows:

United States Constitution, Fourteenth Amendment:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Georgia Code §26-2910 (1968):

A person commits a misdemeanor when he causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause the harm or endanger the safety, and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Georgia Code §26-1103(a) (1968):

(a) A person commits involuntary manslaughter in the commission of an unlawful act when he causes the death of another human being without any intention to do so, by the commission of an unlawful act other than a felony. A person convicted under this subsection shall be punished by imprisonment for not less than one year nor more than five years.

STATEMENT OF THE CASE

As the facts reveal, one Geraldine Gaston Mitchell, a Fulton County resident, died on or about May 9, 1979, between the hours of 5:00 P.M. and 6:00 P.M. (T-20, T-105, T-106). The Petitioner, Freddie Frank Mitchell, was subsequently arrested and charged with her death (T-86, T-142). The indictment charged Petitioner with involuntary manslaughter and provided in pertinent part that Petitioner:

> did unlawfully and without any intention to do so, kill Geraldine Gaston Mitchell, a human being, while accused was engaged in the commission of

> the following unlawful act, in that accused, having possession of a pistol, did endanger the bodily safety of the said Geraldine Gaston Mitchell who was present by consciously disregarding a substantial and unjustifiable risk that his act would cause harm and endanger the safety of the said Geraldine Gaston Mitchell, the disregard constituting a gross deviation from the standard of care which a reasonable person would exercise in said situation, did allow said pistol to point in the direction of the said Geraldine Gaston Mitchell, and while so pointing did pull the trigger on said pistol, causing it to fire and shoot the said Geraldine Gaston Mitchell; thereby killing the said Geraldine Gaston Mitchell

(T-2, T-3). Petitioner was subsequently tried and sentenced to five years in prison on July 25, 1979.

Geraldine Gaston Mitchell was Petitioner's common law wife and had lived with him for two years prior to her death (T-86). On May 9, 1979, Petitioner picked up Geraldine Mitchell at work, at which time they returned to their apartment (T-135, T-136). Upon reaching their apartment, an argument ensued between the two parties in their bedroom (T-136). Petitioner kept a gun under the bed, which Mrs. Mitchell attempted to grab (T-137). Petitioner grabbed the gun first (T-137). Mrs. Mitchell then left the room (T-137). Petitioner remained in the bedroom, but locked the door (T-137, T-139). Mrs. Mitchell came back down the hall and began beating on the door with a hammer and grill (T-140). The door popped open; Petitioner pushed it back to close it and again locked it (T-140). Petitioner held the door closed, during which time he still

had the gun in his hand (T-140). The door again popped open, and in the process of shutting it, the gun went off (T-140, T-141). Mrs. Mitchell screamed that she had been shot; Petitioner opened the door and found her standing in the hallway bleeding (T-141). He immediately rushed her to the hospital where she died later that same evening (T-141).

Prior to trial, Petitioner filed a demurrer to the above quoted indictment (R.388). In the demurrer, Petitioner challenged the constitutionality of the Georgia reckless conduct statute, Georgia Code Section 26-2910 (1968), on the grounds that the statute was violative of the due process clause of the Fourteenth Amendment to the United States Constitution (T-6). The trial court overruled the demurrer (T-6), and the case proceeded to trial.

At the close of all the evidence, the trial judge charged the jury on involuntary manslaughter (T-184), and several misdemeanors falling within the scope of unlawful act involuntary manslaughter under Georgia Code Section 26-1103(a) (1968) (T-185). One of the misdemeanors charged on was reckless conduct as defined by Georgia Code Section 26-2910 (1968) (T-186). The jury retired, and after some deliberation, they were unable to reach a verdict (T-189). Consequently, they returned to the Court and asked the trial judge the following questions:

> "on what primary charges can we find a verdict? on what lesser charges can we render a verdict? difference between the charged?"

(T-189, T-228). The jury was recharged (T-191-193), subsequently returning a verdict of guilty but miscit-

ing the code section which they found Petitioner guilty of violating (T-196). (The jury cited the code section as "26-2190" when presumably they meant to cite Georgia Code Section 26-2910, the reckless conduct statute.) Upon the trial judge's instructions, the code section was struck from the verdict (T-203). Petitioner was sentenced to five years imprisonment (T-205).

Petitioner appealed his conviction to the Supreme Court of Georgia on four enumerations of error by the trial court. One of these enumerations was a challenge to Georgia Code Section 26-2910, the reckless conduct statute, on vagueness grounds. The Supreme Court of Georgia transferred the case to the Georgia Court of Appeals. The state court of appeals summarily rejected the challenge to the reckless conduct statute relying on an earlier Georgia Supreme Court decision, *Horowitz v. State*, 243 Ga. 441, 254 S.E.2d 828 (1979) and affirmed Petitioner's conviction on April 9, 1980. A motion for rehearing was denied on April 24, 1980. Petitioner then applied for writ of certiorari to the Supreme Court of Georgia. The writ was denied on June 11, 1980. A motion for reconsideration was filed and denied on June 24, 1980.

Because of the substantial constitutional claims raised by this proceeding, Petitioner has invoked the jurisdiction of this Court under 28 U.S.C. §1257 (3) to review the judgment of the court below.

REASONS FOR GRANTING THE WRIT

1. The decision below conflicts with decisions of this Court as to the standards which a criminal

statute must meet to satisfy the requirements of the due process clause of the Fourteenth Amendment.

It is established that a law fails to meet the requirements of the due process clause of the Fourteenth Amendment if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide without any legally fixed standards what is prohibited and what is not in each particular case. *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Lanzetta v. New Jersey*, 306 U.S. 451 (1939). The Georgia reckless conduct statute, Georgia Code Section 26-2910 (1968), is constitutionally defective in both senses. This criminal statute does not provide fair warning of the type of conduct it prohibits, nor does it provide an ascertainable standard for judging guilt thereunder. Consequently, the Georgia Court of Appeals, in its affirmance of the trial court, subverted these fundamental principles of due process by rejecting a vagueness challenge to the reckless conduct statute, Georgia Code Section 26-2910 (1968).

A. The Georgia reckless conduct statute, Georgia Code Section 26-2910, is unconstitutionally vague as written.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. *Grayned v. Rockford*, 408 U.S. 104 (1972). A statute must be sufficiently explicit in its description of the acts, conduct or conditions required or forbidden, to prescribe the elements of the offense

prohibited with reasonable certainty. *Beauharnias v. Illinois*, 343 U.S. 250 (1952). Implicit within these requirements is the premise that the law must be one that carries an understandable meaning with legal standards that courts can enforce. The Georgia reckless conduct statute, as written, does not even begin to meet these constitutional requirements.

The statute states:

> *Reckless conduct*
>
> A person commits a misdemeanor when he causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause the harm or endanger the safety, and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Ga. Code §26-2910 (1968). This criminal statute, on its face, does not provide a description of the acts or conduct forbidden, nor does it provide the elements of the offense prohibited with reasonable certainty. The language of the statute prohibits any reckless act which might endanger the safety of another person. The conduct prohibited by this criminal statute is so all-inclusive and generalized that it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. This Court has repeatedly stated that criminal statutes which fail to give due notice that an act is criminal before it is done are unconstitutional deprivations of due process of law. *Papachristou v. Jacksonville*, 405 U.S. 839 (1972); *United States v. Harriss*,

347 U.S. 612 (1954); *Jordan v. De George*, 341 U.S. 223 (1951); *Lanzetta v. New Jersey*, 306 U.S. 451 (1939); *United States v. Cohen Grocery Co.*, 255 U.S. 81 (1921). However, this Court has upheld statutes challenged on vagueness grounds where scienter is an element of the offense. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337 (1952); *Screws v. United States*, 325 U.S. 91 (1945). Measured by this standard, the statute again fails to pass constitutional scrutiny. Clearly, the crime of reckless conduct is not a specific intent crime. Consequently, the statute cannot be upheld on this basis.

Another aspect of the statute's vagueness is that due to its all-inclusive and generalized definition of reckless conduct, the statute is subject to arbitrary and discriminatory enforcement. This risk of abuse in the administration of the law is present in two forms. One risk is that the law may be arbitrarily applied by police and prosecution officials. *Papachristou v. Jacksonville*, 405 U.S. 839 (1972). A reckless conduct prosecution may be merely the cloak for a conviction which could not be obtained on the real, but undisclosed, grounds for the arrest. The other risk is that the statute may be so unclear that a trial court cannot properly instruct a jury. A statute is unconstitutionally vague when it leaves judges and jurors free to decide what is or is not prohibited conduct in a particular case on an ad hoc and subjective basis. *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966). The Georgia reckless conduct statute contains no standards at all, nor does it place any conditions of any kind upon the jury's power to find an accused guilty of reckless conduct. Under this statute, jurors must make determinations of the crucial issue

of whether or not the statute has been violated based upon their own notions of what reckless conduct is. Thus, the statute leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case.

B. Subsequent state court interpretations of the statute have failed to provide standards and guidelines that cure the statute's constitutional deficiencies.

Prior to the statute's enactment in 1968, no general statute punishing reckless conduct existed. P. Kurtz, *Criminal Offenses in Georgia* (1980). Since the statute's passage, few cases construing Georgia Code Section 26-2910 (1968) have been decided. *Crawford v. State*, 245 Ga. 94, ____ S.E. ____ (1980); *Horowitz v. State*, 243 Ga. 441, 254 S.E.2d 828 (1979); *McCane v. State*, 147 Ga.App. 730, 250 S.E.2d 181 (1978); *Hiatt v. State*, 144 Ga.App. 298, 240 S.E.2d 894 (1977), cert. denied; *Smith v. State*, 142 Ga.App. 814, 237 S.E.2d 220 (1977); *Harshaw v. State*, 134 Ga.App. 581, 215 S.E.2d 337 (1975). However, the above cases fail to provide any standards that cure the statute's unconstitutional vagueness. *Crawford v. State*, 245 Ga. 94, ____ S.E.2d ____ (1980) (use of a gun in self-defense when such use is excessive force constitutes reckless conduct); *Horowitz v. State*, 243 Ga. 441, 254 S.E.2d 828 (1979) (upholding the statute on the grounds that it is not void for vagueness. Reckless conduct was driving a car in a residential area in excess of the speed limit. Defendant lost control of the car and skidded towards a child standing in its front yard); *McCane v. State*, 147 Ga.App. 730, 250 S.E.2d

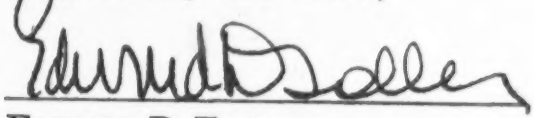
181 (1978) (reckless conduct was shooting at and in the direction of an occupied mobile home); *Hiatt v. State*, 144 Ga.App. 298, 240 S.E.2d 894 (1977) cert. denied (reckless conduct was pulling an auto in front of traffic); *Smith v. State*, 142 Ga.App. 814, 237 S.E.2d 220 (1977) (reckless conduct was entering a trailer under circumstances where the defendant had to break a window to obtain entrance); *Harshaw v. State*, 134 Ga. App. 581, 215 S.E.2d 337 (1975) (reckless conduct was endangering the safety of individuals present when defendant shot someone).

The state courts' opinions in these cases were framed to apply the statute to the defendants in the case then under consideration. On the whole, these cases cannot be purported to provide any interpretation of the statute which would be generally applicable. Consequently, the statute is constitutionally invalid both as written and explained by the Georgia courts.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals of Georgia.

Respectfully submitted,



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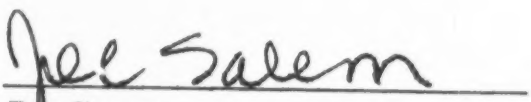

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APPENDIX

GEORGIA COURT OF APPEALS
Mitchell v. State, case no. 59424
decided April 9, 1980

59424. MITCHELL v. THE STATE. 29-45

DEEN, Chief Judge.

The defendant was indicted, tried and convicted of involuntary manslaughter in the commission of an unlawful act in that he pointed a pistol at another (a misdemeanor violation of Code § 26-2908) and was guilty of reckless conduct (as specified by Code § 26-2910, another misdemeanor) in the course of which he caused the pistol to fire, killing a person on the other side of his bedroom door. His appeal, challenging the constitutionality of Code § 26-2910, was transferred by the Supreme Court to this court. *Held:*

1. The issue of constitutionality of this statute was decided contrary to the contentions of the appellant in *Horowitz v. State*, 243 Ga. 441 (SE2d) (1979). This also disposes of the remaining demurrers because the indictment did charge a violation of criminal law, specifying the unlawful acts of reckless conduct and pointing a pistol at another, as a result of which the victim was fatally wounded.

2. Although the unlawful acts of pointing a gun and reckless conduct were alleged conjunctively in the indictment, proof of the homicide as a result of either of them is sufficient to authorize a conviction. "Where under a penal statute an offense may be committed by the doing of any one of several forbidden acts, a conviction may be had upon an indictment which in a single count charges the accused with the commission of

two or more of them, if there be satisfactory proof that he committed at least one of the acts therein specified." *Brazil v. State*, 117 Ga. 32 (43 SE 460) (1902). The court properly instructed the jury that they could return a verdict of guilty if either of the unlawful acts charged was supported by evidence.

3. One may not put questions even to an expert witness so as to call for his opinion on the exact ultimate issue before the jury. *Hamilton v. United States*, 73 F2d 357. While such an expert may give aid to the jury he cannot, under the guise of giving testimony, state a legal conclusion as to a matter at issue. *Travelers Ins. Co. v. Thornton*, 119 Ga. 455 (46 SE 678) (1904); *Hartford Accident & Indemnity Co. v. Camp*, 69 Ga. App. 758 (26 SE2d 679) (1943). The witness may not, on a vital matter, enter the domain of the jury, whose right and duty it is to form its own conclusions uninfluenced by the opinion of others. *Harris v. State*, 188 Ga. 745, 746 (1) (4 SE2d 651) (1939). See also *Harris v. State*, 221 Ga. 398 (144 SE2d 769) (1965); *Garrett v. State*, 147 Ga. App. 500 (249 SE2d 315) (1978). It was not error to exclude on objection an opinion of a member of a city police department who was not present at the time of the homicide as to whether the shooting, in his opinion, was accidental.

Judgment affirmed. Birdsong and Sognier, JJ., concur.

SUPREME COURT OF GEORGIA

Mitchell v. State

case no. 36412

Motion for Reconsideration was denied on June 24, 1980.

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA JUN 24 1980

The motion for a ~~rehearing~~ reconsideration was denied today:

Case No. 36412. Mitchell v. State

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

Supreme Court, U. S.
FILED
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v.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTION PRESENTED

1.

Whether Ga. Code Ann. § 26-2910 (1968), a criminal statute defining reckless conduct, is so vague and indefinite that any penalty prescribed for its violation constitutes a denial of due process as required by the due process clause of the Fourteenth Amendment.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

PART ONE

STATEMENT OF THE CASE

Geraldine Gaston Mitchell, the Petitioner's common law wife died on or about

May 9, 1979 as a result of a gunshot wound. (T. 20, 105, 106, 141). The Petitioner, Freddie Frank Mitchell, was subsequently arrested and charged with involuntary manslaughter. (T. 86, 142). The indictment charged Petitioner with involuntary manslaughter and provided in pertinent part that Petitioner: . . ."did unlawfully and without any intention to do so, kill Geraldine Gaston Mitchell, a human being, while accused was engaged in the commission of the following unlawful act, in that accused, having possession of a pistol, did endanger the bodily safety of said Geraldine Gaston Mitchell who was present by consciously disregarding a substantial and unjustifiable risk that his act would cause harm and endanger the safety of the said Geraldine Gaston Mitchell, the disregard constituting a gross deviation

from the standard of care which a reasonable person would exercise in said situation, did allow said pistol to point in the direction of the said Geraldine Gaston Mitchell, and while so pointing did pull the trigger on said pistol, causing it to fire and shoot the said Geraldine Gaston Mitchell; thereby killing the said Geraldine Gaston Mitchell." The Petitioner was convicted and sentenced to five years imprisonment on July 25, 1979.

The Petitioner appealed his conviction to the Supreme Court of Georgia on four alleged enumerations of error by the trial court. One of these enumerations of error was a challenge to Ga. Code Ann. § 26-2910 on vagueness grounds. The Supreme Court of Georgia transferred the case to the Georgia Court of Appeals. The Georgia Court of Appeals

rejected the challenge to the reckless conduct statute relying on the case of Horowitz v. State, 243 Ga. 411 (1979) and affirmed the Petitioner's conviction on April 9, 1980. A Motion for Rehearing was denied on April 24, 1980. The Petitioner then applied for a Writ of Certiorari to the Supreme Court of Georgia. This application was denied on June 11, 1980. Motion for Reconsideration was filed and denied on June 24, 1980.

Further facts will be developed as necessary for a more thorough consideration of the issues raised by the present petition.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

A. GA. CODE ANN. § 26-2910 IS NOT SO VAGUE AND INDEFINITE THAT THE PENALTY FOR ITS VIOLATION CONSTITUTES A DENIAL OF DUE PROCESS AS REQUIRED BY THE FOURTEENTH AMENDMENT.

In the instant petition, the Petitioner alleges in substance that Ga. Code Ann. § 26-2910 is allegedly so vague and indefinite that it violates the due process clause of the Fourteenth Amendment of the United States Constitution. The Respondent would submit that the test by which this statute should be judged is laid down in the case of United States v. Harriss, 347 U.S. 612, 617 (1953). In Harriss, this Court stated that

"The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." It is clear that if this standard is applied to the present statute, the statute is sufficiently definite to protect the person of ordinary intelligence.

Further, the Petitioner's complaints would appear to apply to the proscription of reckless conduct per se. However, criminal culpability for recklessness has long been a part of American law. Indeed, Ga. Code Ann. § 26-2910 is substantially similar to §§ 2.02(2)(c) and 211.2 of the Proposed Official Draft of the Model

Penal Code of May 4, 1962. (See Appendix).

As such, recklessness is a proper mode for the imposition of criminal culpability in instances where a jury has been properly instructed by the trial court. (See Henderson v. Kibbe, 431 U.S. 145 (1977). Therefore, it is apparent that Ga. Code Ann. § 26-2910 does not deprive the Petitioner of due process of law under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

For all of the above and foregoing reasons, the Respondent respectfully requests this Court deny the Petition for a Writ of Certiorari filed on behalf of the Petitioner, Freddie Frank Mitchell.

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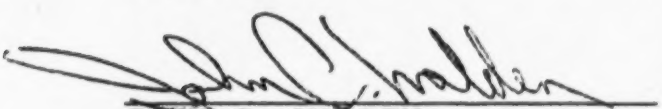

JOHN C. WALDEN
Senior Assistant Attorney General

W. DAVIS HEWITT
Assistant Attorney General

CERTIFICATE OF SERVICE

I, John C. Walden, a member of the Bar of the Supreme Court of the United States and Counsel of Record for the Respondent, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent upon the Petitioner by depositing three (3) copies of same in the United States Mail with proper address and adequate postage to:

Mr. Edward D. Tolley
Cook, Noell, Tolley &
Aldridge
P. O. Box 1927
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Mr. Joe Salem
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This 23rd day of October, 1980.

/s/
JOHN C. WALDEN

Section 2.02. General Requirements of Culpability.

(1) Minimum Requirements of Culpability. Except as provided in Section 2.05, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) Kinds of Culpability Defined.

(a) Purposely.

A person acts purposely with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) Knowingly.

A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly.

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently.

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability Required Unless Otherwise Provided. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element

is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Prescribed Culpability Requirement Applies to All Material Elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for Negligence, Recklessness and Knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

(6) Requirement of Purpose Satisfied if Purpose Is Conditional. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) Requirement of Knowledge Satisfied by Knowledge of High Probability. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Culpability as to Illegality of Conduct. Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the Code so provides.

(10) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

Section 211.2. Recklessly Endangering Another Person.

A person commits a misdemeanor if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not the actor believed the firearm to be loaded.